

Criminal Misc.application no.107 of 2002

Chandra Pal Singh

..Petitioner.

Versus

District & Sessions Judge,
Hardwar and others

..Opposite parties.

Hon'ble Irshad Hussain J.

Heard the learned AGA. None appears for the respondent no.3 despite service.

This is a petition u/s 482 Cr.P.C. for quashing of order dated 12.2.2002 passed by the Sessions Judge, Haridwar and the proceedings pending before 1st Addl. Civil Judge (J.D.) Roorkee under complaint case no.498 of 1996. The complaint was filed U/s 138 of Negotiable Instrument Act on the ground that the cause of action for the complaint had arisen on the basis of the second notice given on 19.10.1996, although the cheque was presented to the bank earlier and thereafter a notice was also given on 7.8.1996. the cheque was presented more than once to the bank which is permissible under the law, but once the cheque is bounced off and notice is given, the cause to file the complaint under section 138 of Negotiable Instrument Act arise on expiry of the time of notice. In this case after the notice dated 7.8.1996 was sent to the accused-petitioner, the complaint was not filed thereafter. But a second notice was sent on 19.10.1996, when again the cheque was dishonoured.

It was argued that the complainant had forfeited right to give the cheque again to the bank after giving earlier notice and he could not have taken the cause to file complaint thereafter on giving second notice. in support of the contention the learned counsel placed reliance on the decision of Supreme Court in the case of **Sadanandan**

Bhadran Vs. Madhavan Sunil Kumar, 1998 (37) ACC 575. The principle laid down in this case support the submission of the learned counsel for the petitioner and since second notice as stated above was given, the complaint was not legally maintainable. In view thereof, the petition succeeds and the proceedings of the complaint case no. 498/1996 u/s 138 of the Negotiable Instrument Act, pending before the 1st Addl. Civil Judge (J.D.) Roorkee are quashed.

(Irshad Hussain, J.)

31.10.2002.
Malkani